In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Msc. Petition No.711/2005
Vijay Singh ***Versus*** State

Date of Order ::: 12/12/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. B.M.Gurjar, for petitioner
Mr. Arun Sharma, Public Prosecutor

Instant petition U/s 482, CrPC has been filed by accused against order dt.31/05/05 whereby Judl. Mag. Todabhim (Karauli) rejected application U/s 70(2) CrPC for converting non-bailable warrant into bailable in Cr.Case No.924/02.

Grievance of petitioner is that he is serving Indian arm since 1991; FIR for offence U/s 147, IPC and under provisions of SC/ST (Prevention of Atrocities) Act was registered against him and since he was posted out-station in the Indian army; as such at the time of filing of charge sheet, he was shown to be absconder.

It has been informed to this Court that while co-accused 28 in numbers who were facing trial in self-same FIR have already been acquitted by competent court of jurisdiction and since application of petitioner U/s 70(2) CrPC has been rejected vide order impugned, he has every apprehension that if he

surrenders, will be arrested on the same day, which may cause loss of his army service.

In **State of UP Vs Poosu (1976(3) SCR 1005** referred to in **Indermohan Vs. State UC** (**JT 2007(11) SC 499=(2007(V) AD (Cr)(SC) 369),** Apex Court observed ad infra:

> **".. Broadly speaking,** the court would take into account the various factors **such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and the State."**

In **Indermohan Vs. State of UC** (supra), it has been held that non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. Apex Court also observed ad infra:

> **"56... There cannot be any straight jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided."**

Be that as it may, looking to the fact that co-accused have already been acquitted and petitioner is

defence personnel and despite standing warrant, still could not have been produced in Court, in the interest of justice, summoning him through non-bailable warrant in view of the nature of offence is not justified and to this extent, this order impugned requires interference in inherent jurisdiction U/s 482, CrPC.

Consequently, misc. petition is partly allowed alongwith stay petition; and the order dt.31/05/05 impugned stands modified and summoning petitioner through non-bailable warrant stands converted into bailable warrants for two months provided petitioner appears within on or before 12/02/08 before the learned trial Court, and if files bail application simultaneously, it may be considered by the trial Court in accordance with law; and in case he fails to appear as directed (supra), trial Court will be free to proceed under law to procure presence of petitioner.

(**Ajay Rastogi), J.**